Louisiana Law Review

Volume 5 | Number 2
May 1943

Torts - Automobiles - Right of Way - Conflicting and Concurring Regulations

B. N. H.

confronting the defendant in res ipsa loquitur situations. In the "bottling cases" as illustrated by the *Ortego* decision, the presumption of negligence is almost irrebuttable. In other situations the prima facie case may be rebutted by merely showing that the defendant used due care. This approach to the problem is nicely illustrated by the *Davis* decision. In that case the Louisiana Supreme Court confirms prior Louisiana jurisprudence as to the general effect of the burden of proof in res ipsa loquitur cases, and recognizes the distinction between merely requiring the defendant to show due care and requiring him to specifically account for the occurrence.

J.J.C.

TORTS—AUTOMOBILES—RIGHT OF WAY—CONFLICTING AND CONCURRING REGULATIONS—Plaintiff was driving east while defendant approached from the south, plaintiff's right. Defendant slowed perceptibly, and plaintiff, assuming he would stop, did not further notice him. They collided in the middle of the intersection. Plaintiff claimed right of way under the city ordinance[1] which generally gave east-west streets the right of way. Defendant contended that he had right of way under the state act[2] which provided that the vehicle approaching from the right has the right of way. *Held,* irrespective of which driver was entitled to the right of way, both were guilty of negligence—suit dismissed. *Burden v. Capitol Stores, Incorporated,* 200 La. 329, 8 So. (2d) 45 (1942).[3]

The Louisiana decisions rendered on intersection accidents involving right of way are uniformly based upon general negligence principles. The courts, by this means, effectively dodge the right of way question and are not put in the position of having to uphold either the statute or the municipal ordinance.

Prior to the enactment of statutory provisions the rule of the road was that the first to reach the intersection had the right of way.[4] Rules giving the right of way to certain streets set a standard of care, but do not eliminate the general requirement of reasonable care under the circumstances. Louisiana recognizes that

1. Baton Rouge City Ordinance.
2. La. Act 286 of 1938, tit. II, § 3, Rule 11 [Dart's Stats. (1939) § 5216].
3. A more complete statement of the facts is given in the appellate case. Burden v. Capitol Stores, Inc., 4 So.(2d) 62 (La. App. 1941).
4. Johnston v. Worley, 3 La. App. 675 (1926).

a right of way is not absolute, but relative,[5] and the driver is held to the duty of using a degree of care commensurate with the circumstances and surroundings.[6] Even though one has the right of way, he is not relieved of all responsibility; and regardless of right of way, if a collision with another appears imminent, he must exercise such care as is consistent with the danger.[7] Hence, regardless of right of way, there is a duty to reduce speed if one sees the danger of a collision; and if both drivers become aware of the danger at the same time, each is under a duty to act to avoid the accident.

Three common situations in which the court has applied these principles are presented: First, the case where defendant has the right of way, but the other driver, by having already entered the intersection, has pre-empted the right of way. In this case the defendant loses his right and must yield to the rights acquired by others.[8] Second, the case of the motorist with the right of way who, seeing another negligently approaching on the unfavored street, does not take care and collides with the other. This driver is unable to recover because he is not justified in forcing his position on the right of way street.[9] Third, the case of the driver who collides with another approaching from the opposite direction who turns in front of him. Here, the driver loses his usual right of way because he should have maintained such a lookout, in anticipation of the use of the road by others, as to enable him to avoid collision with another vehicle which crosses in front of him at such a distance away as to afford a reasonable opportunity to avoid it.[10] From these examples, it becomes apparent that the right of way and its privileges are qualified by well-settled and equitable limitations.

Louisiana has never definitely answered the question, "Does nance?" The court in the instant case was not required to decide this issue since both parties were found to be negligent regardless of who had the legal right of way. Only one Louisiana appellate court decision has considered the problem.[11] In that

5. Thomas v. Leonard Truck Lines, 7 So.(2d) 753 (La. App. 1942).

6. Daricek v. Forrest, 173 So. 601 (La. App. 1937).

7. Moak v. Callo, 16 La. App. 552, 134 So. 763 (1931); Sherwood v. American Ry. Express Co., 158 La. 43, 103 So. 436 (1925).

8. Wilson v. New Amsterdam Casualty Company, 180 So. 870 (La. App. 1938).

9. General Exchange Insurance Corporation v. Carp, 176 So. 145 (La. App. 1937).

10. Reeves v. Pyle, 3 La. App. 718 (1926).

the statute supersede and invalidate a conflicting municipal ordi-

11. There have been two other appellate court decisions which have recognized the problem: In Roll Osborn & Sons Inc. v. Howatt, 167 So. 466 (La.

case, the defendant was fourteen and a half years old. While driving his father's automobile he injured a pedestrian. The statute prescribed fourteen years as the legal driving age; the Shreveport ordinance provided sixteen years as the legal age. The conflicting ordinance was held invalid. The court stated that when the state sees fit to adopt a general scheme for regulation and control, then control by municipal or local authority ceases.[12]

Two views prevail in other states, but the stronger line of authority holds that the statute invalidates any conflicting municipal or local ordinance. In particular, the California decisions strongly support the theory that entire control of traffic should be vested in the state. The leading California case, *Ex parte Daniels*,[13] states,

> "We, therefore, conclude that the regulation of traffic upon the streets of a city is not one of those municipal affairs in which by the Constitution chartered cities are given a power superior to that of the state legislature, but that such power is subject to the general laws of the state, and if inconsistent therewith are invalid."

In California, a municipality may make new and additional regulations, in aid and furtherance of the purpose of the general state regulations, but these must not conflict with the statutes.[14] In the case of an identical ordinance and statute, the ordinance is invalid because "it attempts to impose additional requirements in a field which is fully occupied by statute."[15] The courts of California have gone to the extent of regulating businesses on city streets by finding that if the business requires the use of streets then the state regulations supersede any ordinance.[16]

Also of the majority view is Ohio which agrees that a state statute prevails over any ordinance which provides an exception

---

App. 1936), plaintiff *A* drove ambulance, with siren on, through red light. Statute provides ambulance has right of way, Held, statute also specifically provides that a municipality can control traffic by means of signals, lights, and semaphores; there is no conflict. In Fisse v. Toye Bros. Auto & Taxicab Co., 14 La. App. 133, 129 So. 258 (1930), there was an alleged conflict between a general ordinance of the city of New Orleans and a special police rule, each requiring a different person to stop at the intersection. Held, the rules were not in conflict bcause the purpose was to require extraordinary care.

12. Loewemberg v. Fidelity Union Casualty Co., 147 So. 81 (La. App. 1933). The court here agrees with the long line of authority in California and cites California cases.

13. 183 Cal. 636, 641, 192 Pac. 442, 445, 21 A.L.R. 1172, 1175 (1920).

14. Borum v. Graham, 4 Cal. App.(2d) 331, 40 P.(2d) 866 (1935).

15. Pipoly v. Benson, 125 P.(2d) 482 (Cal. 1942).

16. Morel v. Railroad Commission, 11 Cal.(2d) 488, 81 P.(2d) 144 (1938); People v. Willert, 93 P.(2d) 872 (Cal. App. 1939).

to it, if that exception was not specifically allowed by the statute.[17] Oklahoma, in a case identical with the principal one, held that a statute providing for right of way supersedes a previous statute giving cities power to regulate traffic, as far as right of way is concerned.[18] In New York, local ordinances are prohibited which impair the validity or effect of any state traffic regulation.[19] The Supreme Court of Florida said in discussing the problem, "Any traffic regulation adopted by City Ordinance which is in conflict with, or is inconsistent with, the State regulation on the same subject matter is invalid."[20]

The minority view, but the most interesting and logical to the writer, is expressed by Colorado. The court considered the problem on a practical basis: "There seems no escape from the conclusion that the regulation of traffic at street intersections . . . is primarily a matter of local concern because proper regulation is almost wholly dependent upon local conditions."[21] Colorado bases this stand upon the constitution which grants to the municipalities full right of self-government in local and municipal affairs.[22] The interpretation is to grant "home rule" to all municipalities. Alabama follows by holding that the general rule is subject to reasonable municipal ordinances regulating traffic in congested areas.[23]

All of the decisions on conflicting and concurring regulations are drawn from the state constitutions and the interpretations of them. The majority cases are based on the sections of the various state constitutions which provide for municipal regulations that are not in conflict with statutes, while the minority cases are based on broad interpretations of sections of the state constitutions giving to cities full control of "municipal affairs."

Thus, in Louisiana, the problem must be similarly solved. Louisiana Act 286 of 1938, Title II, Section 3, Rule 20 reads:

> "Local authorities, except as expressly authorized by this Act, shall have no power nor authority . . . to enact or enforce any rule or regulation contrary to the provisions of this Act. . . ."

17. Otto v. Whearty, 63 Ohio App. 495, 27 N.E.(2d) 190 (1940).
18. Constant v. Brown, 189 Okla. 147, 114 P.(2d) 477 (1941).
19. Great A. & P. Tea Co. v. City of New York, 173 Misc. 470, 17 N.Y.S.(2d) 270 (S.Ct. 1940).
20. Duval Lumber Co. v. Slade, 147 Fla. 137, 2 So.(2d) 371 (1941).
21. City and County of Denver v. Henry, 95 Colo. 582, 38 P.(2d) 895 (1934); Brown v. Maier, 96 Colo. 1, 38 P.(2d) 905 (1934).
22. Colo. Const., Art. 20, § 6.
23. Birmingham Stove and Range Co. v. Vanderford, 217 Ala. 342, 116 So. 334 (1928).

Apparently, this is to be interpreted as meaning that entire control of traffic is to be vested in the state, and in the state is the power to delegate to, or withhold from, municipalities any specific authority.[24]

Local authorities are empowered by the statute to regulate traffic by ordinance providing for special devices, such as lights and semaphores.[25] This provision clearly would include special signs establishing "through" and "stop" streets; but it would not include ordinances setting off unmarked streets as having a right of way. In this latter instance the matter of right of way would probably be held subject to the paramount jurisdiction of state statutes in point.

However, the minority rule might be upheld by a liberal interpretation of the City Charter of Baton Rouge which reads in part,

> "The council shall have the power to enact all laws and ordinances necessary for the general welfare of said corporation, and the inhabitants thereof; and to this end, the council is specially empowered to pass ordinances."[26]

Nevertheless, when and if the problem is squarely presented in Louisiana, the supreme court will probably conform to the view that the purpose of the statute is to establish a consistent general scheme to control traffic and, under Louisiana Act 286 of 1938, declare any conflicting ordinance invalid.

B. N. H.

WORKMEN'S COMPENSATION—APPLICABILITY OF LOUISIANA ACT TO FOREIGN EMPLOYMENTS AND INJURIES—Plaintiff, a resident of Louisiana, was employed by the defendant Petroleum Company to work in its Louisiana fields and was later released because of lack of work. Subsequently, being advised of work in a Texas field, plaintiff reported to defendant's Lake Charles office and was sent to work in Texas. Plaintiff was injured in the course of this Texas employment. Defendant reported the accident to the Industrial Accident Board of Texas, and plaintiff was awarded compensation, which continued until his present attorneys filed a claim under the Louisiana Workmen's Compensation Act. The

24. Loewemberg v. Fidelity Union Casualty Co., 147 So. 81 (La. App. 1933), which expressed the California rule, supports this interpretation.
25. La. Act 286 of 1938, tit. II, § 3, Rule 20 [Dart's Stats. (1939) § 5225].
26. [Dart's Stats. (1939) § 6044].